9 FAM 41.112 Notes

(TL:VISA-198; 07-16-1999)

9 FAM 41.112 N1 Visa Reciprocity with Foreign Governments

(TL:VISA-198; 07-16-1999)

The U.S. Government seeks to obtain from foreign governments the most liberal conditions possible, consistent with U.S. laws and regulations, to govern the validity of nonimmigrant visas and the fees charged on a reciprocal basis as required by INA 221(c) and *INA* 281.

9 FAM 41.112 N1.1 Investigation of Fees Charged by Foreign Governments

(TL:VISA-198; 07-16-1999)

a. The fees charged by foreign governments for nonimmigrant visas issued to U.S. citizens, and the periods for which these visas are valid, *must* be updated on a continuing basis. The collection of nonimmigrant data is necessary for determining fees for:

(1) Landing;
(2) Entry;
(3) Residence;
(4) Tax; and
(5) Departure.

b. All relevant documents issued and fees collected are to be included in data compiled for this purpose. [See 9 FAM 41.112 PN1.1 and 9 FAM 41.112 PN1.2.]

9 FAM 41.112 N1.2 Promotion of Improved Reciprocity for Nonimmigrant Visas

(TL:VISA-198; 07-16-1999)

Posts are to work with host country authorities to extend visa validity periods and reduce or eliminate visa fees. The results of these meetings *must* be sent via cable to CA/VO/F/P.

9 FAM 41.112 N1.3 Formal Agreement not Required

(TL:VISA-198; 07-16-1999)

a. As long as practical reciprocity is achieved, formal agreements between the United States and foreign governments are not required. If the host government is agreeable to a proposed visa treatment, this may be

confirmed by an exchange of notes or other communication. The communication *must* include a statement that under U.S. law a consular officer can limit any nonimmigrant visa when warranted. These communications are not to be drawn up as treaties or agreements, but only as confirmations of discussions and announcements of changes in validity periods and/or fees for nonimmigrant visas. The text of any proposed communication regarding visa reciprocity must be sent via cable to CA/VO/F/P for approval.

b. On the basis of reciprocity, the U.S. Government issues nonimmigrant B visas reflecting a maximum validity of 120 months to eligible nationals of most foreign countries without charge, (other than *the* required *$45.00* machine-readable visa *(MRV*) processing fee). Most other categories of nonimmigrant visas may be issued with a maximum validity of 60 months and for multiple entries. (This 60-month validity, however, does not apply to the A-3, C-2, G-3, G-5, K-1, K-2 or Q visa categories.)

9 FAM 41.112 N2 Validity of Nonimmigrant Visa

9 FAM 41.112 N2.1 Instances Where Temporary Visa Schedule is Used

(TL:VISA-198; 07-16-1999)

The temporary schedule listed in 9 FAM PART IV, Appendix C, 300, Exhibit II must be used until a reciprocity schedule has been determined with respect to a particular country.

9 FAM 41.112 N2.2 Maximum Period of Validity

(TL:VISA-175; 01-15-1998)

The maximum validity of any nonimmigrant visa is ten years, but may be limited to less than ten years on the basis of reciprocity. [See Reciprocity Schedules in 9 FAM PART IV Appendix C.] Reciprocity Schedules apply to nationals, permanent residents, refugees and stateless residents of the countries concerned.

9 FAM 41.112 N2.3 Burroughs Indefinite Validity Visas Ceased

(TL:VISA-198; 07-16-1999)

As of April 1, 1994, all *visa-issuing* posts ceased issuing Burroughs nonimmigrant visas with **indefinite** validity. *Effective* January 1,1995, all indefinite Burroughs visas issued before April 1, 1994, are to be *canceled* on the tenth anniversary of their issuance. *Thus, all Burroughs visas will automatically become void after March 31, 2004.*

9 FAM 41.112 N2.4 Passport Must Be Valid 6 Months Beyond Initial Period of Stay

(TL:VISA-198; 07-16-1999)

A nonimmigrant visa is only to be issued in passports that are valid for at least 6 months beyond the initial period of contemplated stay in the United States, except in the following circumstances:

(1) The alien is within the purview of 22 CFR 41.21(b) [see 9 FAM 41.21 (b) *Regulations that* provide exceptions from passport validity requirements for certain A, G, and NATO aliens];

(2) The passport requirement has been waived in the alien's case pursuant to INA 212(d)(4);

(3) The alien has F (student) classification and is granted admission for the period required to complete the course of study indicated on Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. The student's passport should maintain a validity of at least six months beyond the anticipated departure date; or

(4) The alien's passport was issued by a country having entered into an agreement with the United States for the extension of the validity of their passports for a period of six months beyond the expiration date specified in the passport. [See 9 FAM 41.104 N2.1]. *The countries listed in 9 FAM 41.104 Exhibit I have an agreement with the United States whereby their passports are recognized as valid for return to the country concerned for a period of six months beyond the expiration date specified in the passport.*

9 FAM 41.112 N2.5 Visa Valid in Expired Passport

(TL:VISA-198; 07-16-1999)

a. When a passport containing a valid visa expires, the expiration of the passport has no effect on the validity of that visa. The holder, however, *must* be informed, at the time of application for admission, of the need for a new or renewed passport.

b. The passport should be valid for a minimum period of 6 months from the expiration date of the initial period of admission or contemplated period of stay in the United States. The passport may be either the one in which the visa stamp has been placed, or a new passport. Thus, an alien can present two passports; one which fulfills the visa requirement and the other the passport requirement. The alien's nationality, as indicated in the new passport, must be the same as that shown in the passport bearing the visa stamp.

9 FAM 41.112 N2.6 Validity of G-4 Visa Issued in U.N. Laissez-Passer

(TL:VISA-33; 06-29-1990)

See 9 FAM 41.24 N5.2.

9 FAM 41.112 N2.7 Period of Admission by INS

(TL:VISA-198; 07-16-1999)

The validity of a visa refers to the time in which an applicant may *make application* to an immigration officer at a port of entry for admittance into the United States. It *has no bearing on* the length of time for which the *alien* may be admitted. For example, an alien whose B-2 visa may expire a week after entry into the United States, could be admitted by an INS officer at a port of entry for a stay of up to one year. On the other hand, an alien whose B-2 visa has a validity of one year may be granted a stay of only one-week, as may be determined by an INS official at a port of entry.

9 FAM 41.112 N2.8 Maximum Initial Periods of Admission and Extension Fees

(TL:VISA-33; 06-29-1990)

See 9 FAM 41.112 Exhibit I.

9 FAM 41.112 N3 INA 222(g)

9 FAM 41.112 N3.1 Effective Date and Application of INA 222(g)

(TL:VISA-198; 07-16-1999)

Section 222(g) of the Immigration and Nationality Act became effective on September 30, 1996, and applies to any alien seeking admission to the United States in a nonimmigrant status on or after that date.

9 FAM 41.112 N3.2 Result of Overstay

(TL:VISA-198; 07-16-1999)

Under INA 222(g), if an alien overstays on a nonimmigrant visa, that visa is automatically voided. In addition, the alien must apply for future nonimmigrant visas in his or her country of nationality, unless the alien qualifies for an "extraordinary circumstances" exemption.

9 FAM 41.112 N3.2-1 Classes of Aliens Subject to INA 222(g)

(TL:VISA-198; 07-16-1999)

INA 222(g) applies to aliens who entered the United States on a nonimmigrant visa, and remained in the United States beyond the period of stay authorized by the INS.

9 FAM 41.112 N3.2-2 Classes of Aliens not Subject to INA 222(g)

(TL:VISA-198; 07-16-1999)

INA 222(g) has no relevance in immigrant visa cases, nor does it apply to previous overstays relating to an alien who entered the United States without a visa. Thus, aliens who overstayed on the Visa Waiver Pilot Program (VWPP), on the Canada Visa Waiver, or in parole status, are not subject to INA 222(g). Similarly, INA 222(g) does not apply to aliens who entered the United States without inspection. INA 222(g) can be used to deny visa processing only if the alien is a nonresident third-country national (TCN). INA 222(g) also does not apply to certain foreign government officials and representatives of international organizations. [See 41.112 N3.8.]

9 FAM 41.112 N3.3 Visas Automatically Voided Under INA 222(g)

(TL:VISA-198; 07-16-1999)

Under INA 222(g), if an alien overstays the period of authorized stay as determined by INS on Form I-94, (Arrival and Departure Card) that visa is automatically voided. In addition, the alien must apply for future NIV's in his/her country of nationality, unless the alien qualifies for an "extraordinary circumstances" exemption. [See 9 FAM 41.112 N3.5.]

9 FAM 41.112 N3.4 Canceling Voided Visas Under INA 222(g)

(TL:VISA-198; 07-16-1999)

Consular officers and immigration officers who encounter aliens in possession of nonimmigrant visas that have become automatically void under INA 222(g) must physically cancel those visas. The officer canceling the visa should write the word "Canceled" across the face of the visa and annotate the passport page next to the canceled visa "Canceled pursuant to section 222(g) of the INA." Aliens subject to INA 222(g) may and in certain instances must obtain a new visa in a third country only when the Department finds extraordinary circumstances. [See INA 222(g)(2)(B) and 9 FAM 41.112 N3.5.]

9 FAM 41.112 N3.5 "Extraordinary Circumstances" for Third-Country NIV Applicants Outside of the United States

(TL:VISA-198; 07-16-1999)

Under INA 222(g)(2)(B), if there is a finding that "extraordinary circumstances" exist, an alien subject to INA 222(g) may apply for a new nonimmigrant visa in a third country, rather than having to return to his or her country of nationality. The Department has approved the blanket extraordinary circumstances exemptions that follow.

9 FAM 41.112 N3.5-1 Blanket Exceptions

(TL:VISA-198; 07-16-1999)

*a. **Third-country nationals**: TCNs who are resident in the country in which the are applying.*

*b. **Applicants with pending E/S or C/S applications**: Aliens admitted until a certain date who timely filed a non-frivolous application for an extension of stay (E/S) or a change of status (C/S), and who departed the United States while that application was pending are eligible for the blanket exception. A non-frivolous application is one that is not on its face a groundless excuse for the applicant to remain in the United States to engage in activities incompatible with his or her status. The consular officer need not determine whether or not the INS would have approved the application for the application to be considered non-frivolous. This exemption would be merited only if the alien did not work without authorization either before the application was filed or while it was pending.*

*c. **H-1B applicants denied C/S due to H-1B cap**: A blanket exemption is available for aliens who timely filed a non-frivolous application for a change of status to H-1B, but who were precluded from changing status because the annual ceiling on H-1B visas had been reached. This exemption would be merited only if the alien did not work without authorization either before the application was filed or while it was pending.*

*d. **Doctors serving medically underserved areas**: Certain foreign medical graduates (FMGs) who received a waiver of the 2-year foreign residence requirement under INA 212(e) may seek the blanket exception under INA 222(g) based on extraordinary circumstances. In order to qualify for the blanket exception, the waiver must have been requested by an interested U.S. Government agency or a State Department of Public Health. The FMG must also be applying for an H-1B visa to fulfill the 3-year obligation to work in a medically under-served area, as required under INA 214(l). In addition, the FMG must have filed the H-1B petition with INS, or initiated the waiver request with the interested Federal agency or State Department of Public Health before his or her J-1 status expired, (or in the case of a J-2 dependent applying for an H-4 visa, before the principal J-1's*

status expired). Because J-1 exchange visitors (and their dependents) are now routinely admitted D/S, they will not be subject to INA 222(g) in any event, unless the INS or an immigration judge finds a status violation. This blanket exception is only of importance to those FMGs who were admitted until a specific date as opposed to D/S.

9 FAM 41.112 N3.5-2 Individual Exceptions

(TL:VISA-198; 07-16-1999)

Aliens not eligible for the blanket 222(g)(2)(B) extraordinary circumstances exception may seek the exception on a case-by-case basis, and at the discretion of the consular officer:

*(1) **When INA 222(g)(2)(B) exception is granted**: When a nonimmigrant visa is issued to a third country applicant based on the extraordinary circumstances exception in INA 222(g)(2)(B), (blanket or individual exception), the new visa is to be annotated "INA section 222(g) overcome under extraordinary circumstances." This annotation indicates that INA 222(g) was overcome and that the alien was allowed to apply for the nonimmmigrant visa in a third country; or*

*(2) **When INA 222(g)(2)(B) exception is denied**: When an alien subject to INA 222(g) files a nonimmigrant visa application in a third country, and that application is denied, the consular officer will place a notation in the CLASS lookout system under code "222." The notation "222" means the applicant was instructed to obtain a visa at a consular office located in the country of his or her nationality.*

9 FAM 41.112 N3.6 Applying for 212(d)(4) Waiver

(TL:VISA-198; 07-16-1999)

Aliens arriving at a port of entry with a visa that has become automatically void under INA 222(g) may apply for a waiver under INA 212(d)(4) in limited circumstances.

9 FAM 41.112 N3.7 General Applicability of INA 222(g)

(TL:VISA-198; 07-16-1999)

*Section 222(g) of the INA applies to aliens who were admitted on the basis of a nonimmigrant visa. Section 222(g) does **not** apply to the following: Aliens not admitted on the basis of a nonimmigrant visa, including:*

(1) Aliens who enter the United States without inspection;

(2) Aliens who remain in the United States beyond the period of parole authorization;

*(3) Aliens who were admitted with an I-185 or I-586, (Canadian or Mexican Border Crossing Card (BCC)) and remain in the United States beyond the authorized period of admission. (Note: Aliens admitted with a combination B-1/B-2 NIV/BCC issued by the Department **are** subject to INA 222(g) if they remain in the United States beyond the authorized admission);*

(4) Aliens who are exempt from the nonimmigrant visa requirements under 8 CFR 212.1(c), (c-1), (c-2), (d), (e), (f), (i), and (j) and admitted without a nonimmigrant visa;

(5) Aliens who remain in the United States beyond the period of admission authorized under the Visa Waiver Pilot Program (VWPP);

(6) Aliens who were granted Temporary Protective Status (TPS) before their nonimmigrant stay expired; and

(7) Aliens who violated their status in some way other than remaining in the United States beyond the period of stay authorized by the Attorney General.

9 FAM 41.112 N 3.8 INA 222(g) not Applicable to Foreign Government Officials

(TL:VISA-198; 07-16-1999)

Foreign government officials and representatives of international organizations applying for A-1, A-2, C-2, C-3, G-1, G-2, G-3, or G-4 visas, or for visas under NATO-1 through NATO-6 to transact official business on behalf of the foreign government or international organization they represent, are not subject to INA 222(g). This determination was based on INA 102 and INA 212(d)(8). See also 22 CFR 41.21(d). In addition, an alien who was previously admitted to the United States on a nonimmigrant visa until a certain date, who remained in the United States beyond the authorized period of stay, and who then applies in a third country for one of the nonimmigrant visas listed in this paragraph in his or her capacity as a foreign official or a representative of an international organization, is not subject to INA 222(g).

9 FAM 41.112 N3.9 Alien Admitted Until a Specified Date vs. Admitted Duration of Stay (D/S)

(TL:VISA-198; 07-16-1999)

The treatment accorded nonimmigrants under INA 222(g) depends on whether the aliens were admitted until a specified date, or whether they were admitted for duration of stay (D/S).

9 FAM 41.112 N3.9-1 Aliens Admitted Until a Specified Date

(TL:VISA-198; 07-16-1999)

Nonimmigrants who were admitted until a specific date are subject to INA 222(g) when they remain in the United States after the date noted on their Form I-94 (Arrival/Departure Record). They are subject to INA 222(g) before the I-94 expiration date only if there is a formal finding of a status violation in termination of the alien's period of authorized stay. Such a finding may occur when the alien requests a change of status, extension of stay, etc.;

9 FAM 41.112 N3.9-2 Alien Admitted for Duration of Status (D/S)

(TL:VISA-198; 07-16-1999)

Nonimmigrants who were admitted D/S are subject to INA 222(g) only when there is a formal finding of a status violation by the INS or by an immigration judge, resulting in the termination of the period of authorized stay.

9 FAM 41.112 N3.10 Alien in Possession of More Than One Nonimmigrant Visa

(TL:VISA-198; 07-16-1999)

When an alien is in possession of more than one nonimmigrant visa, the nonimmigrant visa under which the alien was admitted and overstayed becomes automatically void and must be canceled. [See 9 FAM 41.112 N3.3.] The alien may be readmitted to the United States only on a visa issued in his or her country of nationality unless an extraordinary circumstances exception is granted under INA 222(g)(2)(B). While the other nonimmigrant visa does not become automatically void, it may be used for admission only if it was issued in the alien's country of nationality. Therefore, if the other nonimmigrant visa was not issued in the country of the alien's nationality, it, too, must be canceled.

9 FAM 41.112 N3.11 Effect on INA 222(g) Departure Pending Extension of Stay, Change of Status Application, or Voluntary Departure

(TL:VISA-198; 07-16-1999)

*a. **Aliens admitted until a specific date**: Nonimmigrants admitted to the United States until a specific date who apply for a change of status (C/S) or an extension of stay (E/S), but who leave the United States after the I-94 expires and before a decision on the application has been issued, are subject to INA 222(g). This is because they remained in the United States beyond the period of stay authorized, i.e. the I-94 expiration date.*

These aliens may, however, possibly benefit from an exception under INA 222(g)(2)(B) or a waiver under INA 212(d)(4).

*b. **Aliens admitted D/S**: Nonimmigrants admitted D/S (Duration of Stay) who leave the United States while the extension of stay or change of status application is pending, are not subject to INA 222(g), provided that no status violation was found that would have resulted in the termination of the period of stay authorized. In addition, D/S nonimmigrants whose extension of stay or change of status applications were denied for reasons other than a status violation are not subject to INA 222(g).*

*c. **Voluntary departure**: INA 222(g) applies even if the alien was granted voluntary departure.*

9 FAM 41.112 N3.12 Cancellation of Voided Combination Nonimmigrant Visa/Border Crossing Cards

(TL:VISA-198; 07-16-1999)

The combination B-1/B-2 NIV/BCCs are subject to INA 222(g) and become automatically void when the alien remains in the United States beyond the authorized admission date. Combination B-1/B-2 NIV/BCCs that have become automatically void under INA 222(g) must be physically canceled. [See 9 FAM 41.112 N3.4.] BCCs, however, as defined in INA 101(a)(26) are not nonimmigrant visas per se, and do not become automatically void under INA 222(g) when the alien remains in the United States beyond the period of authorized stay.

9 FAM 41.112 N4 Interpretation of "Expired Nonimmigrant Visa" for Purposes of Automatic Revalidation

(TL:VISA-159; 12-20-1996)

With regard to the automatic extension of validity of expired nonimmigrant visas at ports of entry pursuant to 22 CFR 41.112(d), [see 9 FAM 41.112 (d) Related Statutory Provisions] an "expired nonimmigrant visa" means a visa which is no longer valid due to the passage of time or because the maximum number of entries for which the visa is valid has been reached.

9 FAM 41.112 N5 Issuance of Two-Entry Visa in Lieu of Reciprocal Single-Entry Visa

9 FAM 41.112 N5.1 Same Purpose Required for Each Entry in Two-Entry Visa

(TL:VISA-159; 12-20-1996)

An alien who wishes to make more than one application for admission during the course of a single journey may be issued a two entry visa, even though the appropriate schedule contained in 9 FAM PART IV Appendix C limits the validity of the visa to a single application. The alien must, on each occasion, be seeking admission for the same principal purpose, and the visa may not be valid for more than two applications for admission. This provision is applicable to all categories of nonimmigrant visas, except K visas.

9 FAM 41.112 N5.2 Double Fee Prescribed

(TL:VISA-198; 07-16-1999)

When a *reciprocity* fee is prescribed in 9 FAM PART IV Appendix C for a single-entry visa, then th*at* fee must be doubled when a visa is issued for two applications for admission. *In addition to the reciprocity fee prescribed in 9 FAM PART IV Appendix C, the machine-readable visa (MRV) fee of $45.00 per applicant must also be paid.*

9 FAM 41.112 N6 Limiting Visa Validity

9 FAM 41.112 N6.1 Validity Limited with Caution

(TL:VISA-198; 07-16-1999)

a. Consular officers *must* apply with caution the discretionary authority accorded by 22 CFR 41.112(c)(1) and (2) [see 9 FAM 41.112 (c)(1) Related Statutory Provisions and 9 FAM 41.112 (c)(2) Related Statutory Provisions] when limiting the validity of visas.

b. The routine practice of limiting visa validity may lead to charges by the host government of bias. A foreign government may raise an objection that the United States is not according reciprocal treatment to its nationals. Such a practice may also result in an unnecessary increase in workload. The reapplication rate of aliens with limited visas is relatively high at many posts. Therefore, the period of time and the number of applications for admission for which a nonimmigrant visa is valid *must* not be restricted without due cause to less than that permitted by the reciprocity schedules in 9 FAM PART IV Appendix C.

c. Visa restriction should occur only if the consular officer has reason to believe that the applicant qualifies as a nonimmigrant only for a limited period of time or only for the number of applications for admission required for the proposed visit. At most posts, such cases should constitute only a small percentage of the nonimmigrant visa caseload. [See 9 FAM 41.113 PN10 for procedures on annotating visas when limiting validity in accordance with this Note.]

9 FAM 41.112 N6.2 Visa Validity and Clearances in Out-of-District Cases

(TL:VISA-175; 01-15-1998)

Consular officers are encouraged to issue full validity visas to aliens who qualify for a nonimmigrant visa, even when the application is made away from the alien's normal place of residence. Pre-clearances with another post on out-of-district applicants need be done only when required by the Department's regulations or instructions, or when the consular officer considers it necessary in order to establish the applicant's eligibility. Such a clearance is not required, for example, in the case of an alien from a traditionally low-risk country whose bona fides are evident to the officer. Post-checks (after visa issuance) are of limited use and may be dispensed with, unless specifically required by regulations or instructions.

9 FAM 41.112 N6.3 Individual D Visas

(TL:VISA-198; 07-16-1999)

Individual D visas *must* be issued for the full period of validity and number of applications for admission indicated by 9 FAM PART IV Appendix C, but only after all necessary clearances have been received.

9 FAM 41.112 N6.4 Delayed Validity Period

(TL:VISA-198; 07-16-1999)

A visa may be limited in accordance with 22 CFR 41.112(c)(4) [see 9 FAM 41.112 N6] in cases of aliens whose purpose of entry falls under the *MANTIS* procedures. [See 9 FAM PART IV Appendix C, “Special Clearance Procedures” for the country concerned.] A visa may also be limited in any other case in which the consular officer believes a delayed validity period is warranted. For example, a visa may be issued several weeks prior to the alien’s anticipated date of entry. If such is the case, then the consular officer should annotate the machine-readable visa, indicating that the alien is not authorized to enter the U.S. until a specific date. The date of entry should coincide with the date his reason for entering commences.

9 FAM 41.112 N7 Limitations on Visas Requiring Posting of Bond

9 FAM 41.112 N7.1 Limitation for One Entry and Six Months

(TL:VISA-198; 07-16-1999)

In cases where a bond has been required and posted, consular officers *must* limit the visa to one entry, valid for 6 months. This will enable INS to cancel bonds upon request without communicating with the visa-issuing post. [See 9 FAM 41.113 *PN10.3* for notation to be placed on visa.]

9 FAM 41.112 N7.2 Sponsor's Request for Cancellation of Visa in Order to Withdraw Bond

(TL:VISA-198; 07-16-1999)

a. In some cases the sponsor may request cancellation of the alien's visa in order to withdraw the bond. After physically canceling the visa, [see 9 FAM 41.122 (c) Related Statutory Provisions] the consular officer *must* notify the INS office concerned by letter or interested party telegram that the bond may be canceled and the money released.

b. The communication *must* contain the applicant's full name, date and place of birth, nationality, the amount of the bond, the applicant's "A" serial number (which will have been shown on INS notification that the bond was posted), and the date on which the visa was canceled. The consular officer *must* annotate Form OF-156, Nonimmigrant Visa Application, which should reflect the amount of the bond, the alien's "A" serial number and the date on which the visa was canceled.

9 FAM 41.112 N8 Validity of B-1 Visa Issued to Personal Servant or Employee

(TL:VISA-198; 07-16-1999)

The validity of a B-1 visa issued to a personal employee who is accompanying a nonimmigrant employer *must* not exceed the validity of the visa issued to the employer. [See 9 FAM 41.31 N6.3 for cases in which the B-1 classification is authorized for personal employees of nonimmigrant employers.]

9 FAM 41.112 N9 No Distinction Between Invalidation and Revocation

(TL:VISA-198; 07-16-1999)

Regulations no longer distinguish between invalidation and revocation in cases when it is determined that the bearer of a visa is ineligible. The visa *must* be revoked in accordance with 9 FAM 41.122 Related Statutory Provisions and 9 FAM 41.122 Notes.